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ADMINISTRATIVE CORPORATION and BOARD OF
TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARPENTERS SOUTHWEST
ADMINISTRATIVE CORPORATION,
a California non-profit corporation; and
BOARD OF TRUSTEES FOR THE
CARPENTERS SOUTHWEST TRUSTS,

Plaintiffs,

v.

FABRIC WALLCRAFT OF
CALIFORNIA, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

1. DAMAGES FOR FAILURE
TO PAY FRINGE BENEFIT
CONTRIBUTIONS;
2. SPECIFIC PERFORMANCE
FOR SPECIFIC MISSING
REPORTS;
3. INJUNCTIVE RELIEF FOR
FAILURE TO TIMELY FILE
AND PAY EMPLOYER
MONTHLY REPORTS; and
4. SPECIFIC PERFORMANCE
TO CONDUCT AN AUDIT

JURISDICTION

1. This is a civil action to recover fringe benefit contributions, for specific performance for specific missing reports, for injunctive relief to compel proper reporting, and for specific performance to conduct an audit. This action arises and jurisdiction of the court is founded as to Section 301 of the Labor-Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. § 185a, and Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132 and 1145.

PARTIES AND OTHERS

2. CARPENTERS SOUTHWEST ADMINISTRATIVE CORPORATION, a California non-profit corporation ("CSAC") is a non-profit corporation duly organized and existing under and by virtue of the laws of the State of California. CSAC's principal place of business is in the County of Los Angeles, State of California.

3. At all relevant times herein, the BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS were and now are fiduciaries and are duly authorized and acting trustees of those ERISA Trust Funds defined in paragraph six.

4. CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS are also authorized agents to act on behalf of the remaining Funds and entities (defined in paragraph nine) with respect to these delinquencies. CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS are sometimes collectively referred to as PLAINTIFFS.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants named herein as DOES 1 through 10, are unknown at this time to PLAINTIFFS. PLAINTIFFS therefore sue the defendants by such fictitious names, and PLAINTIFFS will amend this complaint to show their true names and capacities when the same has been ascertained. PLAINTIFFS are informed and believe and thereon allege that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, either through its own conduct, or through the conduct of its agents, servants and/or employees, or in some other manner as yet unknown, and that PLAINTIFFS' damages as herein alleged were proximately caused by those defendants

6. At all relevant times Southwest Carpenters Health and Welfare Trust, Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust, and Southwest Carpenters Training Fund, were and are express trusts which exist pursuant to Section 302 of the LMRA, 29 U.S.C. §186, and are multiemployer plans

1 within the meaning of section 3 of ERISA, 29 U.S.C. §1002.

2 7. At all relevant times the Construction Industry Advancement Fund of
3 Southern California, the Residential Housing Contract Administration Trust Fund,
4 the Contractors-Carpenters Grievance and Arbitration Trust, and the Contract
5 Administration Trust for Carpenter-Management Relations, were and are express
6 trusts which exist pursuant to section 302 of the LMRA, 29 U.S.C. §186.

7 8. At all relevant times the Carpenters-Contractors Cooperation
8 Committee ("CCCC"), was and is a non-profit California corporation which exists
9 pursuant to section 5(b) of the Labor Management Cooperation Act of 1978, 92
10 Stat. 2020 (1978), for the purposes set forth in section 302(c)(9) of LMRA, 29
11 U.S.C. § 186(c)(9).

12 9. CSAC is the administrator of Southwest Carpenters Health and Welfare
13 Trust, Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust,
14 and Southwest Carpenters Training Fund, and assignee of the Construction Industry
15 Advancement Fund of Southern California, the Residential Housing Contract
16 Administration Trust Fund, the Contractors-Carpenters Grievance and Arbitration
17 Trust, the Contract Administration Trust for Carpenter-Management Relations, and
18 the Carpenters-Contractors Cooperation Committee, and the Grievance Obligation
19 Trust Fund (collectively, the "PLANS"), and as such is a plan fiduciary within the
20 meaning of Section 3 of ERISA, 29 U.S.C. §1002.

21 10. The duly authorized and acting trustees or directors of each of the
22 PLANS have also assigned to CSAC all their right, title and interest in and to any
23 and all amounts due and owing to the respective PLANS by the employer as herein
24 alleged.

25 11. Southwest Regional Council of Carpenters and its affiliated local
26 unions ("UNIONS") affiliated with United Brotherhood of Carpenters and Joiners
27 of America are labor organizations that are a party to the collective bargaining
28 agreements involved.

12. At all relevant times, employer, FABRIC WALLCRAFT OF CALIFORNIA, INC., a California corporation, and DOES 1 through 5 (“EMPLOYER”), was and is a contractor engaged in the construction industry within the jurisdiction of the UNIONS.

**FIRST CLAIM FOR RELIEF FOR
DAMAGES FOR FAILURE TO PAY
FRINGE BENEFIT CONTRIBUTIONS**

13. On or about September 8, 2010, EMPLOYER, agreed to be party to and bound by Proposition A/AA & Measure J Facilities Project Labor Agreement - Letter of Assent (“LETTER OF ASSENT”). A true and correct copy is attached hereto, marked as Exhibit “1” and incorporated hereby by reference.

14. On or about the date set forth thereon, EMPLOYER made, executed and delivered to the UNION, a Carpenters Memorandum Agreement, Single Project Agreement dated October 15, 2015 (“MEMORANDUM AGREEMENT”). A true and correct copy is attached hereto, marked as Exhibit “2” and incorporated herein by reference.

15. The LETTER OF ASSENT and the MEMORANDUM AGREEMENT bind EMPLOYER to the terms and conditions of the Master Labor Agreement between the United General Contractors, Inc. and Southwest Regional Council of Carpenters and its affiliated Local Unions of the United Brotherhood of Carpenters and Joiners of America, DATED July 1, 2012, and any renewals or subsequent Master Labor Agreements, and the PLANS' agreements and any amendments, modifications, extensions, supplementations or renewals of the PLANS' agreements (“collectively referred to as “AGREEMENTS”).

16. The PLANS are third party beneficiaries of the AGREEMENTS and Master Labor Agreements.

17. The AGREEMENTS require EMPLOYER to pay fringe benefit contributions at the rates set forth therein for every hour worked by employees

1 performing services covered by the AGREEMENTS, and on account of all
2 compensation paid to employees performing services covered by the
3 AGREEMENTS.

4 18. The AGREEMENTS require EMPLOYER to make the fringe benefit
5 contributions by way of Employer Monthly Reports ("REPORTS") to the PLANS at
6 their place of business in Los Angeles, California, on or before the 25th day of each
7 month following the month during which the hours for which contributions are due
8 were worked or paid. Further, the AGREEMENTS specifically provide that the
9 venue of an action to recover delinquent fringe benefit contributions shall be in the
10 County of Los Angeles.

11 19. In acknowledging both that the regular and prompt payment of
12 employer contributions is essential to the maintenance of the PLANS, and the
13 extreme difficulty, if not impracticability, of fixing the actual expense and damage
14 to the PLANS when such monthly contributions are not paid when due, the
15 AGREEMENTS provide that the amount of contractual damages to the PLANS
16 resulting from a failure to pay contributions when due shall be presumed to be the
17 sum of \$30.00 per delinquency or 10 percent of the amount of the contributions due,
18 whichever is greater. This amount shall become due and payable to CSAC as
19 liquidated damages in addition to the unpaid contributions or contributions paid
20 late.

21 20. EMPLOYER engaged workers who performed services covered by the
22 AGREEMENTS and who performed labor on works of construction within the
23 jurisdiction of the AGREEMENTS undertaken by EMPLOYER during the term of
24 the AGREEMENTS.

25 21. EMPLOYER has failed to pay the fringe benefit contributions in the
26 manner prescribed by the AGREEMENTS, and there is now due and owing to the
27 PLANS from EMPLOYER in the amounts set forth in Exhibit "3".

28 22. The AGREEMENTS require EMPLOYER to pay for the expense of

auditing EMPLOYER's business records if an audit by the PLANS indicates that EMPLOYER failed to report and pay all contributions.

23. As a result of the failure to pay fringe benefit contributions in the manner prescribed by the AGREEMENTS, EMPLOYER is liable for interest on the unpaid contributions from the first of the month following the date due, at the rate prescribed by the AGREEMENTS.

24. The PLANS have conducted check stub audits, which indicate that EMPLOYER failed to report and pay all contributions owed during this time period. True and correct copies of the Audit Invoices and Audit Reports (social security numbers redacted), dated October 4, 2017 and April 18, 2018 are attached as Exhibit "4."

25. As a result of the failure to pay fringe benefit contributions in the manner prescribed by the AGREEMENTS, EMPLOYER is liable for an amount equal to the greater of interest on the unpaid contributions as prescribed by section 6621 of the Internal Revenue Code of 1954, 26 U.S.C. §6621, or liquidated damages provided for under the AGREEMENTS.

26. It has been necessary for PLAINTIFFS to engage counsel to bring this action to compel compliance with the AGREEMENTS, and to recover the attorneys' fees and the costs for which EMPLOYER is liable pursuant to the AGREEMENTS and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2).

27. The PLANS have complied with all conditions precedent.

28. EMPLOYER is delinquent in contributions in a further sum, the exact amount of which is unknown to PLAINTIFFS, and PLAINTIFFS will move to amend this complaint when the true amount of the fringe benefit contribution delinquency is determined.

29. CSAC has, concurrently with the filing of this complaint, served a copy of same upon the Secretary of Labor and Secretary of the Treasury.

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**SECOND CLAIM FOR RELIEF FOR
SPECIFIC PERFORMANCE FOR SPECIFIC MISSING REPORTS**

30. PLAINTIFFS reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 29 of their First Claim for Relief, and allege for a Second Claim for Relief for Specific Performance for Missing Reports against EMPLOYER, as follows:

31. This action for specific performance arises and jurisdiction of the court is founded on Section 301 of the Labor-Management Relations Act of 1947 ("LMRA") (29 U.S.C. §185A) and Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended (29 U.S.C.A §1132).

32. The AGREEMENTS require EMPLOYER to complete and submit Employers Monthly Reports ("REPORTS") stating the amount of contributions owed along with fringe benefit contribution to the PLANS at their place of business in Los Angeles, California, on or before the 25th day of each month following the month during which the hours for which contributions are due were worked or paid for.

33. EMPLOYER has failed to submit REPORTS and contributions for the following months: December 2015 through June 2018.

34. The PLANS have no adequate or speedy remedy at law, as the PLANS are unable to calculate the amount owing.

**THIRD CLAIM FOR RELIEF FOR
INJUNCTIVE RELIEF FOR FAILURE TO TIMELY FILE
AND PAY EMPLOYER MONTHLY REPORTS**

35. PLAINTIFFS reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 33 of their First and Second Claims for Relief and allege for a Third Claim of Relief for Injunctive Relief against EMPLOYER, as follows:

36. ERISA Section 502(a) provides in part: "A civil action may be brought

1 . . . (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice
2 which violates any provision of this title or the terms of the plan. . . ."

3 37. Additionally, Section 515 of ERISA (29 U.S.C. § 1145), as amended
4 provides "Every employer who is obligated to make contributions to a
5 multiemployer plan under the terms of the plan or under the terms of a collectively
6 bargained agreement shall, to the extent not inconsistent with law, make such
7 contributions in accordance with the terms and conditions of such plan or such
8 agreement."

9 38. EMPLOYER has failed to submit REPORTS and/or remit full
10 contributions to the PLANS for the period of December 2015 to June 2018, and may
11 fail to furnish REPORTS or remit contributions to the PLANS for subsequent
12 months.

13 39. As a result of EMPLOYER's failure to submit REPORTS and/or pay
14 contributions on the dates on which its contributions were due, EMPLOYER may
15 have become indebted to the PLANS for contributions, liquidated damages and
16 interest.

17 40. PLAINTIFFS timely notified EMPLOYER by letter of each
18 delinquency and of the assessment of each delinquency, and repeatedly demanded
19 payment of the delinquencies. To date, EMPLOYER has failed to pay the
20 delinquencies owed to the PLANS.

21 41. EMPLOYER's failure to promptly pay its delinquencies to the PLANS
22 on the dates on which such contributions were due is a violation of the
23 AGREEMENTS.

24 42. EMPLOYER's delinquencies to PLAINTIFFS have occurred from
25 September 2015 and are continuing.

26 43. EMPLOYER will continue to refuse or fail to pay contributions to the
27 PLANS and thereby create future unpaid delinquencies during the remaining terms
28 of the AGREEMENTS. Unless EMPLOYER is enjoined from failing to make its

1 contributions and restrained from incurring delinquencies, the PLANS will suffer
 2 irreparable injury for which there is no adequate remedy at law since, among other
 3 things, the PLANS will be required to bring a multiplicity of actions at law to
 4 recover the delinquencies as they occur, to the PLANS' great expense and hardship.
 5 Further, unless EMPLOYER is so enjoined, based on experiences with other
 6 similarly situated employers, the PLANS have little prospect of ever collecting on
 7 the additional delinquencies incurred as such employers frequently petition for
 8 bankruptcy, dissolve or otherwise cease doing business as a result of the financial
 9 difficulties involved in their delinquencies, and the PLANS are unable thereafter to
 10 collect delinquencies thus owing.

11 **FOURTH CLAIM FOR RELIEF FOR**
 12 **SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT**

13 44. PLAINTIFFS reallege and incorporate herein by reference each and
 14 every allegation contained in paragraphs 1 through 43 of their First, Second and
 15 Third Claims for Relief, and allege for a Third Claim for Relief for Specific
 16 Performance to Conduct an Audit against EMPLOYER, as follows:

17 45. The AGREEMENTS provide that the PLANS have the specific
 18 authority to examine the EMPLOYER's job cost records, general check registers
 19 and check stubs, bank statements and canceled checks, general ledgers, cash
 20 disbursements ledgers, worker compensation insurance reports, financial statements,
 21 corporate income tax returns, employee time cards, payroll journals, individual
 22 earnings records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.
 23 Government, quarterly state tax returns, health and welfare and pension reports for
 24 all other trades, cash receipts' journal, copies of all contracts and all material
 25 invoices.

26 46. The PLANS have requested access to EMPLOYER's business records
 27 for the purpose of conducting an audit.

28 47. EMPLOYER has failed and/or refuses to allow the PLANS to complete

1 such an audit.

2 48. The PLANS have no adequate or speedy remedy at law.

3 49. It has been necessary for PLAINTIFFS to engage counsel to bring this
4 action to compel compliance with the AGREEMENTS, and to recover the
5 attorneys' fees and the costs for which EMPLOYER is liable pursuant to Section
6 502(g)(1) of ERISA and pursuant to the AGREEMENTS.

7 50. PLAINTIFFS have, concurrently with the filing of this complaint,
8 served a copy of same upon the Secretary of Labor and Secretary of the Treasury.

9 WHEREFORE, PLAINTIFFS pray for judgment as follows:

10 **FOR PLAINTIFFS' FIRST CLAIM FOR RELIEF FOR**
11 **DAMAGES FOR FAILURE TO PAY FRINGE**
12 **BENEFIT CONTRIBUTIONS**

13 1. For unpaid contributions in the sum of \$30,318.63;
14 2. For interest and liquidated damages, as provided in the
15 AGREEMENTS;

16 2. For a statutory amount equal to the greater of the interest on unpaid
17 contributions which were owing as of the time of the filing of the complaint herein
18 (at the rate prescribed by law), or liquidated damages as provided in the
19 AGREEMENTS, in the amount to be determined.

20 **FOR PLAINTIFFS' SECOND CLAIM FOR RELIEF FOR**
21 **SPECIFIC PERFORMANCE FOR SPECIFIC MISSING REPORTS**

22 1. That EMPLOYER be compelled to forthwith submit the REPORTS for
23 the following months along with the appropriate contributions: December 2015
24 through June 2018.

25 **FOR PLAINTIFFS' THIRD CLAIM FOR RELIEF FOR**
26 **INJUNCTIVE RELIEF FOR FAILURE TO TIMELY FILE AND**
27 **PAY EMPLOYER MONTHLY REPORTS**

28 1. For issuance of both preliminary and permanent injunctions restraining

1 and enjoining EMPLOYER, for so long as EMPLOYER remains bound to make any
2 payments or contributions to the PLANS, from failing to deliver or cause to be
3 delivered to PLAINTIFFS, no later than the 25th day of the month:

- 4 a. A complete, truthful, and accurate Employer's Monthly Report to
5 Trustees covering all employees of EMPLOYER employed during the
6 previous month under the AGREEMENTS;
- 7 b. A declaration from a responsible employee of EMPLOYER
8 attesting from his or her personal knowledge under penalties of perjury
9 to the completeness, truthfulness, and accuracy for the Monthly
10 Report; and
- 11 c. Check for the full amount owing on the Monthly Report.

12 2. For submission and timely payment of the Employers Monthly Reports
13 to Trustees for the period December 2015 through the present, so long as the
14 EMPLOYER remains bound to make any payments of contributions to the PLANS.

15 **FOR PLAINTIFFS' FOURTH CLAIM FOR RELIEF FOR**
16 **SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT**

17 1. That EMPLOYER be compelled to forthwith submit to completion of an
18 audit of EMPLOYER's business records covering the period from October 15, 2015
19 through the present, by the PLANS' auditors at the premises of EMPLOYER during
20 business hours, at a reasonable time or times, and to allow the auditors to examine
21 and copy the following books, records, papers, documents and reports of
22 EMPLOYER: all job cost records, general check register and check stubs, bank
23 statements and canceled checks, general ledgers, worker compensation insurance
24 reports, financial statements, cash disbursements ledgers, corporate income tax
25 returns, employee time cards, payroll journals, individual earnings records of all
26 employees, forms W-2, 1099 and 1096 remitted to the U.S. Government, quarterly
27 state tax returns, health and welfare and pension report for all other trades, cash
28 receipts' journal, copies of all contracts, and all material invoices;

AS TO ALL OF PLAINTIFFS' CLAIMS FOR RELIEF

1. For reasonable attorneys' fees;
2. For audit costs;
3. For audit costs of this action;
3. For further contributions according to proof; and
4. For such other and further relief as the court deems proper.

Dated: August 23, 2018

DeCARLO & SHANLEY,
a Professional Corporation

By: 

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